

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

ROBERT SARTORI

PLAINTIFFS

VS.

CIVIL ACTION NO. 2:11CV169-P-V

SUSAN C. LITTLE & ASSOCIATES, P.A.
BAC HOME LOANS SERVICING, LP

DEFENDANTS

ORDER

This matter is before the court on motion of the plaintiff to strike documents filed in this case, specifically the affidavit of Susan C. Little (Little Affidavit) in support of defendant's renewed motion to dismiss (#15) and BAC Home Loan's (BAC's) Responsive Pleading (# 31). The plaintiff's motion appears to challenge both the affidavit and responsive pleadings based on his disagreement with the factual assertions and defenses offered in these documents. Plaintiff has provided no legal authority as to why the court should strike these documents.

Plaintiff's motion to strike Ms. Little's affidavit is primarily based on his disagreement as to factual assertions in the Little affidavit. However, plaintiff offers no legal authority as to why the court should strike an affidavit based on disputed facts. As such the motion is not well taken.

Plaintiff argues that BAC's answer and affirmative defenses are frivolous, insufficient and filed in bad faith. Rule 8(b) of the Federal Rules of Civil Procedure requires that a defendant "state in short and plain terms" its defenses. Moreover, Rule 8(c) requires a party to state affirmatively any avoidance or affirmative defenses, and failure to comply with the rule could result in a party's waiver of the defense. *Simon v. U.S.*, 891 F.2d 1154, 1157 (5th Cir. 1990); *Starcraft Co. v. C.J. Heck Co.*, 748 F.2d 982, 990 n.11 (5th Cir. 1984). The court has reviewed BAC's responsive pleading and finds that it satisfies Rule 8 of the Federal Rules of Civil

Procedure. Accordingly, because BAC's responsive pleading is not deficient as a matter of law and satisfies the dictates of Rule 8, the plaintiff's motion to strike is not well taken.

IT IS, THEREFORE, ORDERED that the plaintiff's motions to strike both the affidavit of Ms. Little (#15) and BAC's responsive pleadings (#31) are hereby DENIED.

SO ORDERED, this the 5th day of January 2012.

/s/ Jane M. Virden
UNITED STATES MAGISTRATE JUDGE